MONTANA LEGISLATIVE HISTORY

Chapter 112 19 93

Bill H 129 S _____ Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 20	✓C	Hearing Date(s)	Feb 12	✓C
	Jan 21	✓C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

No minutes were found regarding action taken by the Senate Judiciary Committee.

HB 126 INTRODUCED BY KADAS, ET AL.

CONSTITUTIONAL AMENDMENT TO CREATE 80-100 MEMBER UNICAMERAL LEGISLATURE

1/08	INTRODUCED		
1/08	REFERRED TO JUDICIARY		
1/08	FIRST READING		
1/11	FISCAL NOTE REQUESTED		
1/11	REREFERRED TO STATE ADMINISTRATION		
1/16	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
2/04	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED		
2/13	2ND READING DO PASS MOTION FAILED	39	60

HB 127 INTRODUCED BY PECK, ET AL.

ALLOW HEARSAY IN TROUBLED CHILD TEMPORARY INVESTIGATIVE HEARING

1/08	INTRODUCED		
1/08	REFERRED TO JUDICIARY		
1/08	FIRST READING		
1/14	HEARING		
1/20	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	94	3
1/27	3RD READING PASSED	94	5
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO JUDICIARY		
2/12	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	49	0
3/05	3RD READING CONCURRED	44	4
	RETURNED TO HOUSE		
3/12	SIGNED BY SPEAKER		
3/12	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 112		
	EFFECTIVE DATE: 10/01/93		

HB 128 INTRODUCED BY D. BROWN, ET AL.

PROVIDE FOR NOTICE AND PUBLIC MEETINGS AS PART OF COUNTY DUI PREVENTION PROGRAM

1/08	INTRODUCED		
1/08	REFERRED TO JUDICIARY		
1/08	FIRST READING		
1/08	FISCAL NOTE REQUESTED		
1/14	HEARING		
1/14	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	81	19
1/30	3RD READING PASSED	88	7
	TRANSMITTED TO SENATE		
2/02	FIRST READING		
2/02	REFERRED TO LOCAL GOVERNMENT		
3/23	HEARING		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on January 20, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: No members excused.

Members Absent: Rep. Tim Whalen (D)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 127, HB 157
Executive Action: HB 142

HEARING ON HB 127

Opening Statement by Sponsor:

REP. RAY PECK, HD 15, Havre. A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF HEARSAY EVIDENCE AT A TEMPORARY INVESTIGATIVE HEARING IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING; AND AMENDING SECTION 41-3-403, MCA."

Proponents' Testimony:

John Conner, Asst. Attorney General speaking on behalf of the Montana County Attorney's Association, stated this bill was requested by the County Attorney's Association in response to a problem that evolved as a consequence of a supreme court case in April of 1992. If there are allegations of child abuse or neglect, and the situation is examined by the county attorney, he or she can take action by filing a petition alleging abuse or neglect and seek court control, which can range in specifics from leaving the children with parents to taking the children away from the parents and placing the children in custody of the Department of Family Services (DFS). This equates to an adjudicatory hearing, and this is not the process that this bill addresses. In order for children to be removed from the home on any kind of a long-term basis, there has to be an adjudicatory hearing conducted.

This bill addresses the situation where an emergency exists and the child is taken out of the home because of that emergency. The county attorney then files a Petition for Temporary Investigative Authority. This must be accompanied by an affidavit that sets forth the facts explaining the emergency situation and requesting relief. When this happens, it necessitates filing of that petition. The statute requires that a hearing must be held within 20 days after the filing of the petition. Some basic court control or authority over the child over a period averaging about nine days gives enough time for the temporary investigator to evaluate the situation. The petition also requests such things as psychological evaluations of children, physical evaluations of children, and counseling sessions for parents and the children. **Mr. Conner** said children will be placed in foster care until arrangements can be worked out differently. Sometimes these cases go into adjudicatory proceedings.

There has been some concern as to the potential abuse over this bill. Hearsay testimony is always subject to the discretion of the court simply because it is allowed, but it does not mean the court simply must allow any and all hearsay testimony as evidence. The court, in every case, has the ultimate discretion to control the proceedings, and if the proceedings do not appear to be appropriate under the circumstances, the court has the authority to limit or restrict.

It is not uncommon in criminal law to have hearsay situations. The rules governing criminal law allow the use of hearsay testimony in proceedings that are far more obtrusive.

This is a good bill because in its application, it will be used most often in situations where the child has been taken out of the home and is very emotionally traumatized and simply is not ready or prepared to present any kind of statements in court concerning the nature of problems that he or she is suffering from.

Randy Hood, Chief Public Defender, Lewis and Clark County, contended that until the child is removed from the home, the child is in a crisis situation and suffering from trauma. The child is also being evaluated by professionals. What the child has revealed can be used for court purposes, but many don't want to discuss their parents. They have an intense feeling of going home, and experience feelings of betrayal toward their family. It is very difficult for children to testify against parents. Even after evaluation statements are made by the child after the 20-day period, children are still not ready to testify.

Carolyn Clemens, Deputy County Attorney, Lewis and Clark County, has been handling cases for ten years on behalf of the Department of Family Services. **Ms. Clemens** believes it is important for the committee to know that the kind of proceedings discussed in this bill are often on an emergency basis. There is concern that children are being taken from their parent's homes in situations other than that. These cases often occur in situations where parents are taken to jail, and children are abandoned, and are placed outside the home. The kind of proceeding involved often is where children remain in the home, which is one of the problems in taking a county case to a hearing and requiring a child to come forth and testify. It is very difficult for a child to testify against their parents in a courtroom, even if the parents abused that child. It is very traumatizing for a child to be put through that process. For these reasons it would be helpful for a child's testimony could be presented to a court without the necessity of having the child present in the courtroom. These are limited proceedings and 20 days is not very much time to prepare and conduct investigations, however, in the interest of preserving family unity, the DFS does require that it be brought to court in a timely manner. Oftentimes, this is the initial proceeding, and what the court is determining is the authority to investigate further.

Ann Gilkey, Legal Counsel, Department of Family Services (DFS), explained the DFS brings cases such as child abuse or neglect to the attention of county attorneys. It is at the request of DFS that the county attorney files a petition for temporary investigative authority (TIA). TIA investigates alleged incidents of child abuse and neglect. HB 127 will help the agency ensure these orders for TIA will be granted and that the safety of the children that are at risk from abuse and neglect will be ensured.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, maintained section 41-3-402 already allows an affidavit and a petition for these emergency hearings. Section 41-3-404 also allows the court to consider matters it deems relevant. Hearsay rule is a legitimate rule. 41-3-409 makes an appeal to the Supreme court

possible. Relaxing the hearsay rule raises the possibility of more proceedings being challenged and appealed to the supreme court. The hearsay rule could possibly cut both ways.

Sen. Gary Aklestad, Senate District 6, Galata, is concerned that good parents are being unjustifiably put through this experience. Fifty percent of the children taken from their homes were removed in an unjustified manner. There is potential that this will increase the number of lawsuits. The primary concern is the children, however there is a priority to keep families together.

Mary McCue, Montana Clinical Mental Health Counselors (MCMHC), stated the MCMHC is concerned about parents who have been unjustly accused of child abuse, which is happening more and more. She requested the committee be mindful of this when voting on the bill.

Informational Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked **Ms. Clemens** what the county attorney's office did prior to the Montana Supreme Court decision in regards to hearsay evidence? **Mr. Clemens** said it is more effective to have the witness testify in a courtroom. Many witnesses are hesitant to testify in a courtroom, and children, especially, do not like to testify in a courtroom.

REP. HOWARD TOOLE said that testimony from the children is being delivered through hearsay from someone else. Is it the intent to have hearsay evidence from other sources be admissible, or is it just limited to testimony from the child? **Mr. Conner** said the bill was drafted to be broad enough to cover the situations other than children's testimony directly, although that's the instance in which we are most often concerned. Reports are to be confidential, and in an emergency situation, it's appropriate to maintain confidentiality after the initial stage.

REP. DIANA WYATT asked **Mr. Conner** why an affidavit is required under these circumstances? **Mr. Conner** said the statute requires that the county attorney file a petition that's accompanied by an affidavit. The affidavit is simply an instrument which gives the courts information by which the court can determine what the files will be. Under the law, an affidavit is not evidence, and when it's time for the hearing, a person still has to present evidence at the hearing.

REP. JIM RICE asked **Mr. Conner** if he could explain the supreme court decision and the basis of the decision. Did the statute not authorize hearsay evidence? **Mr. Conner** said the case basically covers testimony from the social workers. The County Attorneys' Association does not see this bill as providing opportunity to file more of these cases, it sees it as an opportunity to relieve the traumatic burdens that are placed on

the witnesses who have to testify in these emergency situations. **REP. RICE** commented that 20 days is a very long time to be without your children. **Mr. Conner** said children are not always removed from their homes. If children are removed from their homes because of an abusive situation, 20 days is not a long time. **REP. RICE** asked what evidence is being used now without this authority. **Mr. Conner** said that depending on the circumstances, it requires that direct evidence be presented in testimony, even if children testify. As the statute is currently written, hearsay is not admissible.

REP. TOOLE said there's no reference made to that kind of evidence. He asked if this is going to lead to a circumstance in which there will be a perception that the children's actual, live testimony is less important in these cases than they formerly were? **REP. TOOLE** is concerned about a blanket allowance of children's testimony to be filtered through social workers and professionals, and in the name of protection, taking them out of the judicial process altogether and increasing the risk that force will be used to remove children from families. What is the bill's intent? **Mr. Conner** said the statute **REP. TOOLE** is referring to is the adjudicatory statute 43-3-404, and he does not believe this bill affects that statute. The Montana County Attorneys' Association requested that this bill be drafted so that this section be placed only in subsection (b) of 41-3-403 which relates only to that hearing. **REP. TOOLE** said the adjudicatory hearing doesn't require testimony from children and probably wouldn't in many instances. The 20-day hearing is the only hearing that the parents are going to get, and it may eliminate any direct contact between children and parents. **Mr. Conner** said this is a full-blown hearing and parents are always involved.

REP. DUANE GRIMES asked **Ms. Gilkey** if the passing of this bill will mean more challenges of litigation and what recourse do parents have? **Ms. Gilkey** said parents would have the same voice that they presently have and that is if they disagree with the court's decision, they may take it to the supreme court.

REP. ANGELA RUSSELL asked **Mr. Conner** to explain hearsay evidence. For example, if **REP. RUSSELL** interviewed a child, as a professional social worker, and she concluded that the family is possibly putting this child at risk, than that is considered hearsay evidence. If the child doesn't actually tell the court this information, but the social worker tells the court, that is also hearsay evidence. If the social worker had videotaped and interviewed the child, is that admissible to the court and considered hearsay? **Mr. Conner** first explained that hearsay is basically a statement made out of court by someone other than the person who is presenting it in court. Yes, the child is giving hearsay information to the social worker. There isn't any provision in this law that allows the utilization of those kinds of tapes to be used as direct evidence although they are being used in criminal evidence.

REP. VIVIAN BROOKE asked **Anne Gilkey** if it is a requirement that the parent/guardian having legal custody of a child receive legal counseling services, and how often is that used in a temporary situation? **Ms. Gilkey** said depending on the situation, it's available if warranted. It is paid for by insurance and mental health centers. The DFS would not require counseling if a family could not pay for it.

Closing by Sponsor:

REP. PECK said this is a very small area being discussed, very limited in scope. It is a protection situation where a child is in an abusive situation needing a temporary investigative authority of courts. A judge makes a lot of determinations in a court setting, and when he hears hearsay testimony, he is going to make a judgement as to the value of that, depending on the character, the knowledge, and the immediate acquaintance of the person who is testifying.

HEARING ON HB 157

Opening Statement by Sponsor:

REP. RANDY VOGEL, HD 86, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR ALCOHOL OR DRUGS; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THEIR THIRD SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTION 61-8-714, MCA."

This may be a radical approach, but it has been proven effective. It's patterned after Arizona's and Oregon's DUI laws. The motor vehicle operated at the time of the offense may be forfeited. If a vehicle is seized, the law enforcement agency may remove the vehicle to a storage area for safe keeping, remove the vehicle to an area designated by the court or provide for another custodian or agent to take custody of the vehicle and move it to an appropriate location within the jurisdiction of the court. An estimated value is taken of the vehicle, and within 20 days of the seizure, the offender is given notice of the seizure as is any person or entity with vested security interests. After 20 days of seizure, a written request has to be sent to the county or city attorneys. They shall assume probable cause that the vehicle is actually subject to forfeiture, and at that point, they initiate proceedings. If the attorney decides that there isn't any probable cause, he shall notify the agency and immediately authorize the release of the vehicle. EXHIBIT 1.

Proponents' Testimony:

SEN. TOM TOWE, SENATE DISTRICT 46, Billings, said he generally does not support forfeiture of property in connection with criminal offenses because there can be horrendous results. **REP. VOGEL** has pointed out law enforcement has tried and tried to

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 127

DATE Jan. 20 1993 SPONSOR(S) Peck

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bandi Hood	SELF	✓	
CAROLYN Clemens	SELF	✓	
Ann Calkins	DFS	X	
Gary Olson	MT. Assoc of Clerks & Police	X	
Russell B Hill	MTLA		X
Mary McCue	Mt. Clinical Mental Health Counselors		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

The following proponents supported SB 24:
Don Waldron, Montana Rural Education Association.
Sandra Oitzinger, Montana Association of Counties.
Tom Hopgood, Attorney, Health Insurance Association of America.
Warren Fraser, School Administration of Montana.
Tim Bergstrom, Montana State Firemens' Association.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. BILL TASH'S has a constituent who is a single parent with dependents and has indicated that she has had problems having claims recognized through her divorce status. He inquired if this bill would help her in this situation? **Mr. Campbell** said he is not sure if the employer would cover the dependents in this situation, and said the bill will not eliminate any potential discrimination.

Closing by Sponsor: None.

EXECUTIVE ACTION ON SB 24

Motion/Vote: **REP. VOGEL MOVED SB 24 BE CONCURRED IN.** Motion carried unanimously. **REP. MCCULLOCH** will carry in the House.

EXECUTIVE ACTION ON HB 127

Motion: **REP. RICE MOVED HB 127 DO PASS.**

Discussion:

REP. GRIMES is concerned that hearsay evidence would be used by adults when the real intention of this bill was to utilize social experts and other experts to talk to children rather than putting children on the stand. **REP. GRIMES** moved **REP. SAYLES'** amendments. **EXHIBIT 1**

Motion/Vote: Question on Amendments (first part of No. 1) and 3 only. They read as follows per final discussion:

1. Title, line 5.
Following: "EVIDENCE"
Insert: "OF THE YOUTH'S STATEMENTS"

3. Title, line 9.
Following: "evidence"
Insert: "of statements made by the affected youth"

Vote: Amendments carried 11-6. Those voting for the amendments are **REPS. VOGEL, BIRD, BERGMAN, BROOKE, GRIMES, MCCULLOCH, RICE, SMITH, TOOLE, WHALEN** and **WYATT.** Those voting to do not pass are **CHAIRMAN FAGG, REPS. CLARK, RUSSELL, SAYLES, TASH,** and **WINSLOW.**

No further discussion on the bill as amended.

Vote: HB 127 DO PASS AS AMENDED. Motion carried 17-1 with **REP. WHALEN** voting no.

HOUSE STANDING COMMITTEE REPORT

January 21, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 127 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 5.
Following: "EVIDENCE"
Insert: "OF THE YOUTH'S STATEMENTS"

2. Page 2, line 9.
Following: "evidence"
Insert: "of statements made by the affected youth"

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 1-21-93 BILL NO. HB 127 NUMBER 18

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	17	1

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 1-21-93 BILL NO. HB 127 NUMBER 17

MOTION: Rep. Grimes' Amendments # 1 and 3 only
Amendments carry 11-6

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	NO	VOTE
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles		✓
Rep. Liz Smith	✓	
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	11	6

DATE 1-21-93
SB HB 127

Amendments to House Bill No. 127
First Reading Copy

Requested by Rep. Sayles
For the Committee on the Judiciary

Prepared by John MacMaster
January 20, 1993

1. Title, line 5.
Following: "EVIDENCE"
Insert: "OF THE YOUTH'S STATEMENTS"
Following: "HEARING IN"
Strike: "A"
Insert: "CERTAIN"

2. Title, line 6.
Strike: "PROCEEDING"
Insert: "PROCEEDINGS"

3. Page 2, line 9.
Following: "evidence"
Insert: "of statements made by a youth"

4. Page 2, line 10.
Following: "hearing"
Insert: "if the evidence offered by a person is corroborated and if the petition alleges that the youth is abandoned, sexually abused or exploited, or in imminent danger of serious mental or physical injury"
Following: "."
Insert: "Corroboration may be by the hearsay offering of another person who testifies as to the same statements."

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, Chair, on February 12, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 127, SB 217, SB 356
Executive Action: None

HEARING ON HOUSE BILL 127

Opening Statement by Sponsor:

Representative Ray Peck, District 15, said House Bill 127 is at the request of the Association of County Attorneys. He explained this will deal with "hearsay", defined in statute as "a statement other than one made by the declarant while testifying at the trial or hearing or offered in evidence to prove the truth of the matter asserted." He pointed out HB 127 deals with a limited area in which it would be allowed. House Bill 127 deals with the order for the immediate protection of youth, petitions

for temporary investigative authority, and is limited to statements made by the affected youth.

Proponents' Testimony:

John Connor of the Attorney General's Office appeared in support of House Bill 127 on behalf of the Montana County Attorneys Association. He said House Bill 127 was the product of a situation that arose when the Montana Supreme Court determined hearsay statements could not be used in cases which involved hearings on temporary investigative authority matters under the child sentencing abuse statutes. Mr. Connor explained the bill has limited application; it proposes to amend only MCA 41-3-403, the statute dealing with the procedural aspects of the temporary investigative authority matters. He stated when a county attorney is confronted with a case in which there are allegations of possible dependency or neglect of a child, the county attorney has two alternative approaches. They can to file a petition alleging dependency and neglect, and request a particular relief. He said these actions range from leaving the children in the home, under the Department of Family Services supervision, to actually removing them from the home and obtaining custody of those children by the state. Mr. Connor told the Committee this is a serious situation in which a hearing is required before any deposition can be made. He stated it is not the situation affected by the provisions of HB 127.

Mr. Connor said HB 127 deals only with a situation in which an emergency petition, a petition for temporary investigative authority is filed, and where it appears based upon the facts it is necessary to remove the child from the home immediately. He explained the county attorney, acting on behalf of the Department of Family Services, files a petition with the court alleging probable cause to establish the removal of the children from the home which is supported by an affidavit filed by the county attorney. He said the parent or guardian is served with that petition and the children are removed. If the parent or guardian chooses to exercise their right to go to a hearing the provisions of HB 127 are involved.

He stated in most of these cases, the county attorney attempts to put on testimony that would otherwise come in through the child by means of hearsay through social workers, law enforcement officers, medical personnel, who have witnessed the abuse the child may have suffered or were told things by the child. The child is then not required to appear at that temporary investigative authority hearing. This removes the child from having to appear and present testimony regarding "things done to them by their parents and guardians".

He explained there was concern in the House about the breadth of the language in the bill's original form in which it stated "hearsay is admissible at the hearing". Mr. Connor told the Committee "hearsay" is not all that uncommon and the rules of

evidence allow it to be used in everything from testimony involving the filing of felony charges to sentencing hearings. He explained the House chose to limit it by saying "only hearsay evidence of statements made by the affected youth". He stated there was no problem with this, since the bill was essentially designed to do this. He pointed out the House also felt HB 127 may not be necessary because the county attorney is required to file an affidavit. He stated the affidavit is not evidence itself; it cannot be utilized in place of the necessary evidence required to be presented at the hearing.

Mr. Connor stated House Bill 127 does not expand the authority of the Department of Family Services to undertake these kinds of actions. It simply allows the utilization of the process which presents less trauma to the affected youth.

Randi Hood, Chief Public Defender for Lewis and Clark County, told the Committee as part of her job she represents every child who is the subject of a dependence and neglect action in Lewis and Clark County. She stated as a public defender in Missoula, she has represented parents in these actions. Ms. Hood urged support of HB 127 which allows the hearsay testimony of children who are the subject of the action. She told the Committee as an advocate for children in these sorts of cases, besides the protection of the children, the overriding concern is to try to have the case conducted in such a way that the child is allowed to ultimately return home. She stated no matter that source of abuse or neglect is alleged against their parents, these children always want to go home, but if the child is placed within the first 20 days in the role of having to appear in court and testify against their parents, the damage to the child is significant. Ms. Hood explained children may not even be competent witnesses. She said the child feels they are to blame and this is an extremely damaging burden to children.

Opponents' Testimony:
None

Questions From Committee Members and Responses:

Sen. Towe said he understood about not having the children testify but he asked about the protections the defendants, the accused parents would have. Randi Hood said there was still a hearing. She said the defendants still have the right to present any competent evidence they have, for example, the hearing could include people "who have come in this home 100 times and have seen these children treated properly". She said the child's credibility could be attacked through third parties.

Sen. Towe asked about the person receiving the statement who is not only in court testifying but is not truthful, how would that situation be addressed. Ms. Hood said there was an additional

safeguard in HB 127. She said she had been asked to speak with children because the social worker was not being truthful. Sen. Towe asked if she could testify. She said she never had an objection when asked to do so by a judge. She said she knew other attorneys who have done this and that the testimony did not always agree with the social workers. She said other professionals also evaluate the child, especially in cases of sexual abuse, so that would provide another professional opinion.

Sen. Rye asked if Mr. Connor would elaborate on Ms. Hood's answer. Mr. Connor pointed out that in temporary investigative authority matters, which he had tried in his years as a county attorney, were never based solely on statements made by children. A child's testimony is an isolated part of the case. He said the court and the county attorney have to be satisfied there is enough evidence to justify this very serious action being taken. He said, in his view, the child's statement alone was not sufficient to initiate a hearing without other investigation. He said HB 127 would allow a child's statements to be allowed in the form of hearsay.

Sen. Towe said the admission of a child's hearsay would place a greater reliance on that evidence. Mr. Connor said he did not think the court would grant a petition in that instance.

Sen. Halligan said there could be large volumes of hearsay evidence in such a case.

Closing by Sponsor:
Rep. Peck said he would address the Committee as a grandfather and a former school psychologist, who has recently worked in a spouse abuse program. He said he firmly believed HB 127 was necessary in this limited respect in this TIA request. He said child abuse and incest are prevalent. He said children are very upset and torn in bad marriages because they have loyalties to both parents. He said it is a terrible thing to require the children to come into court. He said HB 127 would help remedy this situation. He said HB 127 would allow professionals to come in and testify and still protect the children.

He said Sen. Aklestad voiced his concern in the House hearing for the protection of parents, and Rep. Peck said he agreed that parents should not be placed at a disadvantage. He said little children should not be brought in before the court and asked to testify in these situations. He said hearsay testimony should be allowed in this limited format. He said this situation can be very disturbing to children, and in stressful situations, it can be difficult for anyone to give clear and rational testimony.